



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**September 24, 2019 Government Records Council Meeting**

Golda D. Harris  
Complainant

Complaint No. 2016-172

v.

NJ Department of Corrections  
Custodian of Record

At the [date of meeting] public meeting, the Government Records Council (“Council”) considered the [date of FR] [Supplemental, if applicable] Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Complainant’s request items number 1 through 4 and 6 are invalid because they fail to seek identifiable government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the information responsive to the Complainant’s request. N.J.S.A. 47:1A-6. The privacy interests of the subject employees might also be implicated if the requested information in items number 1 through 4 is disclosed; however, the invalidity of the Complainant’s request precludes the need for further analysis.
2. The Custodian has borne his burden of proof that he lawfully denied access to the records responsive to the Complainant’s request item number 5, which sought disciplinary records of the subject employees. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. See Alexander v. N.J. Dep’t of Corr., GRC Complaint No. 2014-268 (June 2015). See also Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004) and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
3. The Custodian did not unlawfully deny access to the records responsive to request item number 7, pension records, because the Custodian certified that such records are not made or maintained by the Department of Corrections and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).



4. The Custodian has borne his burden of proving a lawful denial of access to the records responsive to the Complainant's request items number 8 and 10, because the Custodian timely requested clarification of the requests in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order Dated March 22, 2013). See also Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).
  
5. The Custodian did not unlawfully deny access to the records responsive to request items number 11 through 14 and 16 because the Custodian disclosed said records on the same date he received the copying charge fee from the Complainant's inmate account. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) (citing Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. Northern State Prison, GRC Complaint No. 2004-146 (February 2005)).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 24<sup>th</sup> Day of September 2019

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: September 27, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 24, 2019 Council Meeting**

**Golda D. Harris<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-172**

**v.**

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The Complainant listed several names of purported “NJDOC agents” (Exhibit A-1) for which she sought numerous records. The records that the Complainant states the Custodian unlawfully denied are as follows:

1. Home addresses
2. Home and cell phone numbers (unlisted)
3. Last four digits of social security numbers
4. Last four digits of bank account numbers
5. Disciplinary reports on file
6. Police reports/CAD reports
7. Pension records and provider, contact information/name (carrier)<sup>3</sup>
8. Job related licenses, education and experiences (i.e. C.V.’s or resumes)<sup>4</sup>
9. Job related training for admin., business office, medical and custody personnel
10. Payroll records (are they weekly, bi-weekly, twice a month or once a month?)
11. Salaries (updated and current)
12. Length of service/current status
13. Full names (including married/name changes)
14. Dates of separation, status and reason for separation
15. UMDNJ, Rutgers, UCHC full names of employees records, licenses and titles
16. Latest titles
17. Correct spelling of names
18. NJDOC – Division of Operations contact person, address, phone and fax numbers
19. All arrest records in DOC files with disposition for each of the individuals (i.e. CADs)
20. Public information identified and available under the Uniform Commercial Code<sup>5</sup>

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> In the OPRA request the Complainant requested the “amount and type of any pension received.”

<sup>4</sup> With respect to education and experiences, the Complainant conveyed in her request that she was seeking records which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension.

<sup>5</sup> There were other records requested that are not relevant to this complaint because they were not included on the request which formed the basis of this complaint.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** April 21, 2016

**Responses Made by Custodian:** April 27, 2016, April 28, 2016, and May 10, 2016

**GRC Complaint Received:** June 27, 2016

### **Background**<sup>6</sup>

#### Request and Response:

The Complainant stated that on April 21, 2016, she submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.<sup>7</sup> On April 27, 2016, the Custodian responded to the Complainant by stating that he received the Complainant’s request and was requesting a ten (10) business day extension of time to evaluate and address the request. On April 28, 2016, the first (1<sup>st</sup>) business day following receipt of said request, the Custodian responded in writing. After first identifying ninety-six (96) DOC employees that fit the description of the employees that the Complainant listed in her request (Exhibit A-2), the Custodian informed the Complainant that:

1. Pursuant to N.J.S.A. 47:1A-10, he would disclose to the Complainant the name, last or latest title, last or latest salary, length of service, date of separation and the reason therefor for each of the individuals identified by the Complainant.
2. The portion of the Complainant’s request that seeks home addresses, phone/cell numbers, last four digits of social security numbers, last digits of bank account numbers and disciplinary reports are either not maintained by the agency or are exempt pursuant to N.J.S.A. 47:1A-10.
3. The portion of the Complainant’s request that seeks police reports and numbers does not identify a particular government record and therefore cannot be fulfilled. The Complainant cites MAG Entertainment LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005) as authority for denying the request item.
4. The portion of the Complainant’s request that seeks pension records cannot be fulfilled because such records are not made or maintained by the agency (the Custodian referred the Complainant to the Department of Treasury.)
5. The Custodian required more information concerning the portion of the Complainant’s request seeking information related to conformity with job related education or experiential requirements by identifying for each individual which record the Complainant is seeking to show conformity with the specific job performed by the individual. The Custodian also stated that he required more

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<sup>6</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

<sup>7</sup> The Complainant stated on page 2 of the complaint that she submitted the request on or about April 28, 2016; however, in the Detail Summary she amended the date to reflect a correct date of April 21, 2016.

information concerning payrolls by identifying the specific record being sought for each individual.

6. The Complainant incurred a copying charge fee of \$0.10 for the responsive records, and once the fee is deducted from the Complainant's inmate account the records will be disclosed.

#### Denial of Access Complaint:

On June 27, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC").<sup>8</sup> The Complainant asserted that she submitted an OPRA request to the Custodian on April 21, 2016, which was assigned Tracking No. 12589 by the Department of Corrections ("DOC"). The Complainant stated that the Custodian responded to the request on April 28, 2016, by providing some of the requested records, referring her to the Department of Treasury for other records, and seeking clarification of certain segments of the request.

The Complainant stated that she submitted another request to the Custodian on May 7, 2016, seeking records under OPRA and the common law.<sup>9</sup> The Complainant also stated that she needs the records for her lawsuit, substituted or constructive service, wage of executions and writ of executions pursuant to discovery.

The Complainant stated that on May 10, 2016, she paid the copying charges assessed for the records she requested on April 21, 2016.<sup>10</sup> The Complainant further stated that she responded to the Custodian's April 28, 2016 request for clarification on June 12, 2016, by adding a fuller explanation, correcting the original list and requesting additional records.<sup>11</sup>

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<sup>8</sup> The Complainant stated that she is also requesting many of the records under common law; however, the GRC has no authority to determine whether records are disclosable under common law.

<sup>9</sup> The Complainant attached a copy of her May 7, 2016 correspondence. The correspondence is identified as "OPRA #12589," and begins "[i]n response to your 4/28/16 letter..." As such, it appears to be a reply to the Custodian's April 28, 2016 response to her April 21, 2016 OPRA request; not another OPRA request. In the correspondence, the Complainant reiterated part of her April 21, 2016 request, arguing that unlisted DOC telephone numbers are subject to disclosure, and asked the Custodian several questions. She did not provide clarification of her April 21, 2016 request with respect to conformity with specific experiential, educational, or medical qualifications required for government employment or specificity regarding payroll information, as was requested by the Custodian.

<sup>10</sup> There is no dispute between the parties with respect to the copying charges.

<sup>11</sup> The Complainant also attached to the complaint a copy of an April 18, 2016 OPRA request. Referencing the request, the Complainant stated "original request with the information, names and explanations marked #'s 1.2. and 3. (Evid. 6839) (note: disregard bottom part)." However, the April 18, 2016 request is not the request that formed the basis for the instant complaint and therefore will not be considered in the adjudication of same. The Complainant also attempted to add additional names of purported DOC employees to the April 21, 2016 request by attaching a list of the names to the complaint. The GRC will not consider the added names because they were not part of the OPRA request which formed the basis of this complaint.

### Statement of Information:

On July 14, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 27, 2016 and June 28, 2016, and responded in writing on April 27, 2016, April 28, 2016, May 10, 2016 and June 28, 2016.<sup>12</sup>

The Custodian certified that when he received the Complainant’s OPRA request on April 27, 2016, he requested a ten (10) business day extension of time to address the request. The Custodian certified that he then sought information from the agency’s Human Resources Department on numerous agency employees in an effort to satisfy the Complainant’s request.

The Custodian stated that he received from the Human Resources Department the name, title, date of hire, salary, date of separation and reason for separation for all employees that could be identified; however, some named employees could not be found. The Custodian certified that home addresses, telephone numbers, driver’s license numbers, social security numbers, credit card numbers, bank account numbers, and disciplinary reports are exempt from disclosure as personal identifying information under N.J.S.A. 47:1A-1 and/or as personnel records under N.J.S.A. 47:1A-10. The Custodian further certified that disciplinary records have been held exempt from access as personnel records in Riggins v. Jamesburg, GRC Complaint No. 2009-105 (February 2010) and Vaughn v. City of Trenton, GRC Complaint No. 2009-177 (June 2010). The Custodian also certified that pursuant to Executive Order No. 26 and N.J.S.A. 47:1A-9, information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities and creditworthiness, except as otherwise required by law, is exempt from access.

The Custodian stated that the portion of the Complainant’s request that seeks police reports and numbers was denied as being overly broad pursuant to MAG Entm’t v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) because the request did not identify a government record with specificity. The Custodian certified that he sought clarification for the portion of the request which sought “data which discloses conformity with a specific experiential, educational, medical or qualification required for government service” and “payroll records.” The Custodian certified that the Complainant failed to provide the requested clarification.<sup>13</sup>

The Custodian certified that on May 10, 2016, he received payment of the copying charge fee from the Complainant’s inmate account. The Custodian further certified that on the same date he received the payment, he disclosed the records responsive to request items 11 through 14 and 16 to the Complainant pursuant to N.J.S.A. 47:1A-10. The Custodian attached to the SOI a copy of a letter from him to the Complainant dated May 10, 2016, wherein he stated that a copy of said records is attached.

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<sup>12</sup> The OPRA request received by the Custodian on June 28, 2016 (after the complaint was filed) is dated June 15, 2016. This request did not form, in whole or in part, the basis of the instant complaint; therefore, the request will not be considered by the GRC in the adjudication of the complaint. Moreover, since the Complainant verified the complaint on June 16, 2016, any alleged cause of action would be unripe.

<sup>13</sup> The Custodian also discussed the outcome of a balancing test performed to respond to the Complainant’s request for records under the common law; however, the GRC has no authority to determine whether records are disclosable under common law.

The Custodian certified that he received follow up correspondence from the Complainant on June 28, 2016, seeking the identical records and information as well as additional materials. The Custodian stated that the Complainant was dissatisfied with the employee list provided in response to the April 27, 2017 request; however, the Custodian asserted that he is not responsible for the content of a record. The Custodian cited Kawanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005) in support of his assertion. The Custodian stated that he again made the employee list provided in response to the April 27, 2017 request available to the Complainant.

#### Additional Submissions:

On August 8, 2016, the Complainant submitted a rebuttal to the Custodian's SOI.<sup>14</sup> The Complainant took exception to paragraph numbers 8, 9 and 11 of the Custodian's legal argument in the SOI.<sup>15</sup>

For paragraph number 8, which the Complainant asserted is a list of the purported DOC employees, the Complainant stated that she had corrected and updated the list of 96 individuals. Regarding paragraph number 9, the Complainant asserted that no redactions should have been made for (a) identifying information of public employees and state contractors, (b) a pattern of misconduct, and (c) prior disciplinary records of public employees. The Complainant also asserted that non-DOC employees are "required to record the same public information as those who work directly for NJDOC."<sup>16</sup> The Complainant asserted that a "minor search of the database would produce all of the records I requested and is not overly broad." With respect to item number 11, the Complainant asserted that "I explained that the info. is for my lawsuits, is public and that there is no expectation of privacy or reason to 'protect employees' from my lawsuits!!!" (Emphasis in original.)

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The following records were not requested by the Complainant in her April 21, 2016 OPRA request; therefore, said records are not relevant to this complaint:

- CAD reports
- Pension records and provider, contact information/name (carrier)

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<sup>14</sup> This submission is dated "July 22, 2016" by the Complainant.

<sup>15</sup> The GRC notes that the enumerated paragraphs in the Complainant's rebuttal do not correspond to the numbered paragraphs in the Custodian's legal argument.

<sup>16</sup> The Complainant offered no citations to legal authority in support of her assertions.

- Job related licenses, CVs [curriculum vitae], or resumes
- Job related training for admin, business office, medical and custody personnel
- Are payroll records weekly, bi-weekly, twice a month or once a month?
- Current status of service
- Married names and name changes
- UMDNJ, Rutgers, UCHC full names of employees records, licenses and titles
- Correct spelling of names
- NJDOC – Division of Operations contact person, address, phone and fax numbers
- All arrest records in DOC files with disposition for each of the individuals (i.e. CADs)
- Public information identified and available under the Uniform Commercial Code<sup>17</sup>

Request item 1 – home addresses for employees listed in Exhibit A-2 (“subject employees”)

Request item 2 – unlisted home and cell phone numbers for subject employees

Request item 3 – last four digits of social security numbers for subject employees

Request item 4 – last four digits of bank account numbers for subject employees

Request item 6 – police reports for subject employees

Request items number 1 through 4 seek information, and not specifically identifiable records. Request item number 6 identifies a record but fails to provide any further descriptive information, such as the specific type of police report, the kind of incident necessitating the report, and/or the date or time frame when the report was generated.

The New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted). The court reasoned that:

[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be

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<sup>17</sup> Although some of the Complainant’s request item numbers have been deleted because they are not relevant to the complaint, the GRC will continue to identify the records requested by request item number as set forth above under “Records Relevant to Complaint.” By eliminating the records that were not contained in the April 21, 2016 request, the following enumerated request items were excluded from adjudication in this complaint: #6 (CAD reports), #7 (“provider, contact information/name”), #8 (job related licenses, C.V.’s or resumes), #9, #10 (“are they weekly, bi-weekly, twice a month or once a month?”), #15, #17, #18, #19 and #20.



required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005), N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Moreover, in Harris v. NJ Dep’t of Corr., GRC Complaint No. 2011-66 (August 2012), this same Complainant requested the home addresses for five (5) employees of the Department of Corrections. In that complaint the Council held that her request was invalid under OPRA because it failed to specifically identify the government record sought pursuant to MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass’n, 390 N.J. Super. 166. Here, the Complainant is again seeking information rather than government records.

As such, the Complainant’s request items number 1 through 4 and 6 are invalid because they fail to seek identifiable government records. MAG, 375 N.J. Super. 534, 546; Bent, 381 N.J. Super. 30, 37; N.J. Builders Ass’n, 390 N.J. Super. 166, 180; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the information responsive to the Complainant’s request. N.J.S.A. 47:1A-6. The privacy interests of the subject employees might also be implicated if the requested information in items number 1 through 4 is disclosed; however, the invalidity of the Complainant’s request precludes the need for further analysis.

#### Request item 5 – disciplinary reports on file for subject employees

Here, the Complainant is seeking copies of disciplinary reports for the subject employees. The Council has previously adjudicated complaints in which the records requested were complaints filed against law enforcement and correction officers. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), the Council held that:

N.J.S.A. 47:1A-10 provides in pertinent [part] that “the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access” [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

Further, in Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010), the Council held that:

[a]lthough the Custodian violated OPRA at N.J.S.A. 47:1A-5(g) by failing to provide a response to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and [Merino, GRC No. 2003-110].

More recently, in Alexander v. N.J. Dep't of Corr., GRC Complaint No. 2014-268 (June 2015), the Council found that the Custodian lawfully denied access to a disciplinary record of a corrections officer at the Southern State Correctional Facility. The Council cited Merino, GRC No. 2003-110 and Vaughn, GRC No. 2009-177 in support of its decision.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the records responsive to the Complainant's request item number 5, which sought disciplinary records of the subject employees. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. See Alexander, GRC No. 2014-268. See also Merino, GRC No. 2003-110 and Vaughn, GRC No. 2009-177.

#### Request item 7 – pension records for subject employees

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the records responsive to request item number 7, the requested pension records of the subject employees, are not made or maintained by the agency. To assist her in obtaining the requested records, the Custodian directed the Complainant to the Department of Treasury, Division of Pensions and Benefits.

As such, the Custodian did not unlawfully deny access to the records responsive to request item number 7, pension records, because the Custodian certified that such records are not made or maintained by the Department of Corrections and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

#### Request item 8 – education and experiences for subject employees

#### Request item 10 – payroll records for subject employees

In the Custodian's April 28, 2016 response to the Complainant's OPRA request, the Custodian asked the Complainant to provide clarification and additional information related to conformity with job related education and experience for each of the subject employees. The Custodian also asked the Complainant to identify the specific payroll record or records she was seeking. The Complainant responded to the Custodian on May 7, 2016 but failed to provide clarification of her April 21, 2016 request with respect to conformity with specific experiential,

educational, or medical qualifications required for government employment or specificity regarding payroll information, as was requested by the Custodian.

In Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order Dated March 22, 2013), the Council determined that the custodian bore her burden of proving a lawful denial of access to the requested records because she sought clarification of the complainant's request and the complainant provided no clarification. See also Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Similar to the facts in Schilling, the evidence of record here reveals that the Custodian sought clarification of request items number 8 and 10 on April 28, 2016. However, despite the fact that the Complainant replied to the Custodian on May 7, 2016, she failed to provide the requested clarification.

Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the records responsive to the Complainant's request items number 8 and 10, because the Custodian timely requested clarification of the requests in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling, GRC 2013-293. See also Herron, GRC 2011-363; Moore, GRC 2005-80.

Request item 11 – salaries for subject employees

Request item 12 – length of service for subject employees

Request item 13 – full names of subject employees

Request item 14 – dates of separation and reason for separation of subject employees

Request item 16 – titles of subject employees

OPRA provides that “[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law . . . the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger.” N.J.S.A. 47:1A-5(b).

The Council has repeatedly determined that a custodian is not required to release requested records until payment for the duplication cost of such records is received. In Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), the Council held that:

As the Custodian is awaiting payment for the duplication cost of the requested records, she is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5(b), Santos v. N.J. State Parole Board, GRC Case No. 2004-74 (August 2004), and Cuba v. Northern State Prison, GRC Case No. 2004-146 (February 2005).

For request items number 11 through 14 and 16, the Custodian compiled a list of the following information for all applicable subject employees: name, title, date of hire (which is responsive to the Complainant's request for “length of service”), salary, date of separation and reason for separation. In his April 28, 2016 response, the Custodian informed the Complainant

that she had incurred a copying charge fee for the responsive records, and once the fee was deducted from the Complainant's inmate account the records would be disclosed. The Custodian certified that on May 10, 2016, he received payment of the copying charge fee from the Complainant's inmate account and that he then disclosed the records responsive to request items number 11 through 14 and 16.

Therefore, the Custodian did not unlawfully deny access to the records responsive to request items number 11 through 14 and 16 because the Custodian disclosed said records on the same date he received the copying charge fee from the Complainant's inmate account. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff, GRC 2006-54 (citing Santos, GRC 2004-74 and Cuba, GRC 2004-146).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Complainant's request items number 1 through 4 and 6 are invalid because they fail to seek identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the information responsive to the Complainant's request. N.J.S.A. 47:1A-6. The privacy interests of the subject employees might also be implicated if the requested information in items number 1 through 4 is disclosed; however, the invalidity of the Complainant's request precludes the need for further analysis.
2. The Custodian has borne his burden of proof that he lawfully denied access to the records responsive to the Complainant's request item number 5, which sought disciplinary records of the subject employees. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. See Alexander v. N.J. Dep't of Corr., GRC Complaint No. 2014-268 (June 2015). See also Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004) and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
3. The Custodian did not unlawfully deny access to the records responsive to request item number 7, pension records, because the Custodian certified that such records are not made or maintained by the Department of Corrections and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. The Custodian has borne his burden of proving a lawful denial of access to the records responsive to the Complainant's request items number 8 and 10, because the Custodian timely requested clarification of the requests in writing, and the

Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order Dated March 22, 2013). See also Herron v. New Jersey Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

5. The Custodian did not unlawfully deny access to the records responsive to request items number 11 through 14 and 16 because the Custodian disclosed said records on the same date he received the copying charge fee from the Complainant's inmate account. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) (citing Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004) and Cuba v. Northern State Prison, GRC Complaint No. 2004-146 (February 2005)).

Prepared By: John E. Stewart

September 17, 2019

# **EXHIBIT A-1**

PURPORTED "NJDOC AGENTS" AS LISTED BY THE COMPLAINANT

Requested information is for the following NJDOC agents sued in their INDIVIDUAL capacity—NOT their official capacity, listed as New Jersey State Prison and Edna Mahan Correctional Facility employees as follows: William J. Audersal; Valerie Arthur; Steven Johnson; Helen Adams; James Barnes; William Hauck; Richard Salvatore; Sarah Davis; Kresha Fisher; Alana Wallibilich; Jerome Scott; Mr. (Doe) Zimmernick; Ms. (Doe) Woods; Gary M. Lanigan; (continued next page)

3. Alterique Washington; Joseph Sokolof; Vanessa Collins; S. McLaughlin; Sharon Belly; Jennifer Petrillo; Celeste Thatcher; Sandra Brainbridge; Mr. (Doe) Paulo; R. Walte; Ms. Carofilus; Ms. Tonner; Laleethia Holland; April Washington; Tia Trumbetta; SCO Richardson (female/Black) at EMCF; Mark Farsi; Bettie Norris; James T. Aousis; Yvonne Pierce; Allen Tomptin; Marcus Powell; Amillia Lenzhaw; Robin Keller; Melinda Minorics; SCO L. Griffin (female/Black) at EMCF; Robert Leonard; Mr. Picelli; Robert Moranco; Douglas D. Chiesa; K. Matejcek; Kelly Lusso; Marilyn Montijo; SCO Booker (female/Black) at EMCF; Ebony Brown; Sherri Stove; SCO B. McCrea; Gregory Bartkowski; Charles Warren; Justine Graham; Phillip Szczaski; Johnny Wu; Donique Ivory; Sgt. Bundy (male/white) at WSA; Lynn Whittfield; Desha Jackson; SCO Snowling; C. Ray Hughes; Denise Smith; COR Noble; COR Smith (female/Black) at EMCF; SCO Whittke; Anthony Clark; SCO Cuff; SCO O'Guerra; Anthony Quioness; Quirecia O'lea; Daniel Hunter; Jeffrey Oberly; SCO Caleca; SCO Arriola; SCO GRACIA (not Garcia); Lt. Bighani; Lt. J. Riotta; Lt. O'lea; Linda Hausold; Ms. (Doe) Woods (female) at EMCF Business Office; Arlene Vicari; Ailene McClish; SCO Braker (female/Black) at EMCF; SCO M. Cardona; SCO Vival; SCO VanTassle; SCO Berry (female/Black) at EMCF; Sgt. Karpew; Lt. Spies; COR D. Dunston; SCO Mitchell (female/Black) at EMCF; Sgt. L. Johnson; Sgt. K. Young; SCO Soriano; and SCO K. Perez.

# **EXHIBIT A-2**



## IDENTIFIED DOC PERSONNEL LISTED BY THE CUSTODIAN

1. William J. Anderson
2. Valerie Arthur
3. Steven Johnson
4. Helen Adams
5. James Barnes
6. William Hauck
7. Richard Sanatore
8. Sarah Davis
9. Kiesha Fisher
10. Alana Wallibillich
11. Jerome Scott
12. Mr. Zimmermick
13. Ms. Woods
14. Gary Lanigan
15. Alterique Washington
16. Joseph Sokolof
17. Vanessa Collins
18. S. McLaughlin
19. Sharon Belly
20. Jennifer Petrillo
21. Celeste Thatcher
22. Sandra Brainbridge
23. Mr. Paulio
24. R. Waltz
25. Ms. Carofilus
26. Ms. Tonner
27. Laleethia Holland
28. April Washington
29. Tia Trombetta
30. SCO Richardson (at Edna Mahan)
31. Mark Farsi
32. Bettie Norris
33. James T. Plousis
34. Yvonne Pierce
35. Allen Tomplin
36. Marcus Powell
37. Amillia Renshaw
38. Robin Keller
39. Melinda Minorios
40. SCO L. Griffin (at Edna Maha)
41. Robert Leonard
42. Mr. Picelli
43. Robert Moranco
44. Douglas Chiesa
45. K. Matejeck
46. Kelly Russo
47. Marilyn Montijo
48. SCO Booker (at Edna Mahan)
49. Ebony Brown
50. Sherri Stove
51. SCO B. McCrea
52. Gregory Bartkowski
53. Charles Warren
54. Justine Graham
55. Phillip Ptecszski
56. Johnny Wu
57. Donique Ivery
58. Sgt. Bundy (NJSP)
59. Lynn Whittfield
60. Desha Jackson
61. SCO Snowling
62. C. Ray Hughs
63. Denise Smith
64. COR Noble
65. COR Smith (at Edna Mahan)
66. SCO Whittke
67. Anthony Clark
68. SCO Cuff
69. SCO O'Guerra
70. Anthony Quioness
71. Quiecia o"lea
72. Danielle Hunter
73. Jeffrey Oberly
74. SCO Caleca
75. SCO Arriola
76. SCO Gracia
77. Lt. Bigham
78. Lt. J. Riotto
79. Lt. O'Lea
80. Linda Housold
81. Ms. Woods (business office Edna Mahan)
82. Arlene Vicari
83. Ailene McClish
84. SCO Braker (Edna Mahan)
85. SCO M. Cardona
86. SCO Vival
87. SCO Van Tassle
88. SCO Berry (Edna Mahan)
89. Sgt. Karpew
90. Lt. Spires
91. COR D. Dunston
92. SCO Mitchell (Edna Mahan)
93. Sgt. L Johnson
94. Sgt. K. Young
95. SCO Soriano
96. SCO K. Perez